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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

S.D.,

Petitioner,

v.

THE SUPERIOR COURT OF SAN
DIEGO COUNTY,

Respondent;

SAN DIEGO COUNTY HEALTH AND
HUMAN SERVICES AGENCY,

Real Party in Interest.

D075882

(San Diego County
Super. Ct. No. J519573AB)

PROCEEDINGS for extraordinary relief after reference to a Welfare and
Institutions Code section 366.26 hearing. Yvonne E. Campos, Judge. Petition denied.

Jill Smith for Petitioner.

No appearance by Respondent.

Thomas E. Montgomery, County Counsel, Caitlin E. Rae, Chief Deputy County
Counsel, and Kristen M. Ojeil, Deputy County Counsel, for Real Party in Interest.

S.D. (Father) seeks writ review of a juvenile court order setting a hearing under Welfare and Institutions Code section 366.26¹ for his minor children, Ta. D. (Daughter) and Ty. D. (Son). Father contends there is insufficient evidence to support the court's underlying finding that the return of the children to his custody would create a substantial risk of detriment to their physical or emotional well-being.

FACTUAL AND PROCEDURAL BACKGROUND

In 2005, Daughter was born, and in 2013, Son was born. In August 2017, the San Diego County Health and Human Services Agency (Agency) received a referral that Daughter and Son were being neglected as a result of methamphetamine use by their parents, A.D. (Mother) and Father. In early September, a probation officer searched the family's home pursuant to a felony warrant for Father. A syringe with a needle was found in a bathroom that was accessible to the children. The syringe contained liquid blood in it, indicating that the blood was not old. Mother stated she had last used methamphetamine intravenously in July. Father stated he had last used methamphetamine two days before at a friend's home. Father was arrested and incarcerated for a probation violation for absconding from his drug treatment program one month earlier.² A few days later, Mother tested positive for methamphetamine.

¹ All statutory references are to the Welfare and Institutions Code.

² In February 2017, Father was arrested after using methamphetamine and discharging a firearm in a hotel room. In September 2017, Agency expected Father to be released in April 2018 from incarceration for his probation violation.

In late September, Agency filed section 300 dependency petitions for both Daughter and Son. The petitions alleged the children had suffered, or there was a substantial risk they would suffer, serious physical harm or illness within the meaning of section 300, subdivision (b), because of their parents' inability to provide regular care for them due to their use of methamphetamine. In its detention report, Agency stated that Daughter had an ADHD diagnosis for which she was not taking her prescribed medication, and Son had a congenital heart condition for which he took medication. Father stated that after he and Mother moved to California from Pennsylvania two years earlier and were influenced by the children's maternal grandmother's drug lifestyle, everything went downhill. Father stated he had been using methamphetamine intravenously for one and one-half years, while Mother had been using it for about one year.³ At the children's detention hearing, the court found Agency made a prima facie showing in support of the dependency petitions and detained the children to be cared for at the Polinsky Children's Center, a licensed foster home, or an approved home of a relative or nonrelative extended family member.

At the October 2017 jurisdiction and disposition hearing, the court made true findings on the petitions' allegations, declared the children dependents of the court, placed them in a licensed foster home, and ordered reunification services for their parents.

³ In late September 2017, Mother told Agency that she had used methamphetamine almost daily for two years.

At the April 2018 six-month review hearing, the court considered Agency's status review report, which stated that Mother and Father were no longer in a relationship and Father wanted to move back to Pennsylvania if his probation could be transferred to that state. The children's paternal grandmother, who resided in Pennsylvania, had recently been approved for placement of the children under the Interstate Compact on the Placement of Children (ICPC). Daughter consistently stated she would like to be placed with her paternal grandmother in Pennsylvania. Father had just been released from custody and appeared at the hearing. While in custody, Father completed a parenting class and a substance abuse class, maintained daily phone contact with the children, and had monthly visits with them. Agency believed there was a high risk the children would be neglected if they were returned to their parents' care at that time. The court continued the children as dependents in their foster home placement and ordered that the parents continue to receive reunification services.

At a May 2018 special hearing, the court accepted the approved ICPC home study for the paternal grandmother and gave Agency discretion to place the children with her. Later that month, the children were placed with the paternal grandmother in Pennsylvania.

In its 12-month status review report and addenda, Agency stated that the children were doing very well in their placement with the paternal grandmother. Mother had consistently visited the children weekly until they moved to Pennsylvania and then saw them monthly until her August arrest and incarceration on felony theft charges. After Father's release from jail in April, he started the process to transfer his probation to

Pennsylvania to be near his family. Father was enrolled in a drug treatment program in San Diego for about one month before being discharged in June for excessive absences. Agency was informed that Father had been doing well in that program until he was discharged. Father told Agency that he discontinued his attendance at that program because he thought he would be "leaving and probation said it was okay." Father also did not have a relapse prevention plan. Father was enrolled in dependency drug court in May, but was discharged from it in July because of excessive unexcused absences. In August, Father met with a substance abuse specialist and was given an appointment for another drug treatment program. However, he did not attend that appointment.

In late August, Father informed Agency that his move to Pennsylvania had been approved and he was on his way there. In early September, he met with his Pennsylvania probation officer and was given a list of drug treatment programs. He told Agency that he visited one program two weeks later, but did not enroll in it because he would have to pay for it himself. He stated that if he went to a program selected by the probation department, then it would pay for the program. Father had an October intake appointment at a drug treatment program that his probation officer had referred him to.⁴ During the period of May through September 2018, all of Father's drug tests were negative, although he did not show up for one drug test appointment. Since he moved to Pennsylvania, Father visited the children three to five times per week under supervision by the paternal grandmother. The children interacted appropriately with Father and

⁴ However, Father apparently did not attend that appointment and did not enroll in that drug treatment program until late January 2019.

seemed close to him. Father acted appropriately during the visits and did not appear to be under the influence of any substance.

In the middle of December, the paternal grandmother reported that she suspected Father was using drugs again. She explained that he "blew up at her" in a way that he gets when he uses drugs. Also, on one occasion, he called her at 3 a.m. and, sounding "all out of it," told her that he had been in an accident and his truck ran off the road into a ditch. Father also had not come to visit the children in a week. Father denied to Agency that he had crashed his truck and instead claimed that it had been stolen and was found in a ditch.

In January 2019, the paternal grandmother reported that she believed Father was doing better, but probably was not completely "clean." He spent Christmas with the children and brought them nice gifts. However, on New Year's Eve, he lost his temper and was verbally mean to the paternal grandmother, so she made him leave her home. By January, Father had not yet provided Agency with information for his substance abuse treatment program or provided proof of his attendance at NA meetings, the name of his sponsor, or a legible relapse prevention plan. Agency did not have any recent drug test results for Father. Also in January, Daughter was hospitalized for two weeks due to mental health issues that placed her at significant risk of self-harm without proper and immediate treatment.

In late January, Father enrolled in a substance abuse treatment program, submitted clear copies of his relapse prevention plan to Agency, and had two negative drug tests.

The paternal grandmother reported that Father was doing "fantastic" at that time and he was requesting unsupervised visits with the children.

At the February 2019 contested 12-month review hearing, the court found, by clear and convincing evidence, that return of the children to their parents would create a substantial risk of detriment to their physical and emotional well-being. The court further found that the parents had consistently and regularly contacted and visited the children, made significant progress in resolving the problems that led to their removal, and demonstrated the capacity and ability to complete the objectives of their treatment plans and provide for the children's needs. Accordingly, the court found there was a substantial probability the children would be returned to the parents' physical custody by the 18-month review hearing. The court ordered the parents to comply with their case plans. The court gave Agency discretion to allow Father to have unsupervised visits with the children.

In its March 18-month status review report, Agency recommended termination of the parents' reunification services and the setting of a section 366.26 hearing. Although Father had enrolled in a substance abuse treatment program in late January and his counselor reported that he was doing fine, he had completed only two months of the four-to-six month program. Also, Father had attended nine of 44 scheduled NA meetings and had yet to obtain a sponsor. Father's drug tests were negative from late January through late February. Daughter was feeling better mentally and wanted to move back in with Father. The paternal grandmother believed Son, however, could not handle another change. Agency recognized that Father's behavior had improved over the two-month

period since his enrollment in the substance abuse treatment program, but it was concerned about his significant delay in engaging in services. Agency believed that Father needed to show a longer period of sobriety and compliance with his probation conditions and to establish support to ensure his continued sobriety. Agency did not believe the children could be safely returned to either parent's care at that time. It believed the children deserved safety and permanency.

In its May addendum report, Agency stated that Father's drug treatment program counselor reported that Father was making good progress in treatment and his prognosis for long-term recovery was good. All of Father's drug tests were negative. Agency stated that Father appeared to be in compliance with his case plan requirement that he attend at least two NA meetings per week. Father's sponsor stated that he had been Father's sponsor for three to four months and Father seemed to be doing really well. However, he and Father had not yet begun any "step work." His sponsor stated that he had no concerns about Father relapsing at that time. Agency stated that Father had not yet developed a written relapse prevention plan. Father continued to visit the children daily and assisted them with their daily routines. His visits had progressed to structured, unsupervised visits with the children. Agency concluded that the parents had made limited progress in addressing the original protective issue. It stated the parents had not demonstrated over significant time that they are able to consistently maintain sobriety to give it confidence they will permanently be drug free. Agency expressed concern that after the parents were no longer subject to probation monitoring, they may not be able to execute their relapse prevention plans on their own. It noted that the parents did not enter

drug treatment until late in their case plans and still had to implement a working relationship with their sponsors regarding recovery steps. Accordingly, Agency continued to recommend termination of their parental rights and the setting of a section 366.26 hearing.

At the May 15 contested 18-month review hearing, an Agency social worker testified consistently with Agency's reports and addenda and confirmed that Father's prognosis was good. However, she did not have any information from his probation officer regarding his compliance or noncompliance with his probation conditions. She was concerned about Father becoming the children's primary caregiver and did not want to upset the stability they had in the paternal grandmother's care. Given the children's history of "ups and downs," she worried that their return to Father's custody could uproot their stability and be detrimental to them. She was also concerned that Father had a pattern of entering and leaving drug treatment programs and that he was "very new into his sobriety." The social worker wanted Father to start working with his sponsor on his recovery steps, continue to attend NA meetings, develop an updated relapse prevention plan, continue with his drug abuse treatment program, and continue to have negative drug tests.

Father testified that he moved from California to Pennsylvania to change the lifestyle that led him to abuse drugs and become incarcerated. In Pennsylvania, he worked the night shift on a full-time union job that allowed him to go to the paternal grandmother's home each day to feed the children breakfast, help them get ready before school, help them with homework after school, and feed them dinner before he went to

work. He denied that he had a pattern of leaving drug treatment programs, stating he had left only one treatment program and did so to move to Pennsylvania. He believed he had an adequate relapse prevention plan. He stated that he had not attended all of his NA meetings because of his 12-hour work shift and caring for his children, but would attend all future NA meetings if ordered to do so. Father stated he had another three months before completion of his drug treatment program. Father admitted he had an accident with his truck and called the paternal grandmother "in a panic" because he did not know what to do. He denied the accident had anything to do with drugs. He stated Daughter was "[b]eyond excited" when he moved to Pennsylvania and told him that she wanted her family back. He also saw Son, his "best buddy," improve emotionally and behaviorally after he moved to Pennsylvania.

The paternal grandmother testified that Father began visiting the children daily after he moved to Pennsylvania. She refused to supervise his visits on only a couple of days after Father was in the accident and had argued with her. She observed that Son's behavior had improved a "hundred percent" since he began receiving behavioral therapy and other services. She also stated that Daughter had a "hundred percent" turnaround in her emotional health since her January hospitalization. She confirmed that Father typically has breakfast with the children in the morning, is there when they return home from school, has dinner with the family, and helps Son with his homework. She believed that it would be in the children's best interest for Father to live in her home full-time with them and that she was in agreement with that. She stated the children "want their family back."

After considering Agency's reports and addenda and the parties' other documents and hearing the testimony of witnesses and counsel's arguments, the court stated "what we're looking at is the entire timeline and the entire timeline of what opportunities they've had, and I've got to take a look at is this a Johnny-come-lately; and therefore, will [Father's sobriety] stick?" The court later commented that this case "is not as clear-cut as one would think, because frankly the truth is we're all banking on [the paternal grandmother] . . . because [she] has provided the necessities of life for these children." The court found that "it's a little too soon to give [Father] the return of the [children] in light of [his] track record" The court found that the return of the children to either parent at that time would create a substantial risk of detriment to their safety, protection, or physical or emotional well-being. The court found that there was not a substantial probability the children would be returned to the custody of either parent and safely maintained in either parent's home within an extended period of time. The court stated that the children want solid, dependable, and safe parenting, and that the paternal grandmother was the one that was giving them that. The court found that the parents had made "some" progress in complying with their case plans, but that "there is still substantial work that each could do or could have done." The court terminated the parents' reunification services and set a section 366.26 hearing for September.

On May 22, Father filed a notice of intent to file a writ petition challenging the court's order setting the section 366.26 hearing. On June 24, we issued an order acknowledging that a notice of intent to file a writ petition had been filed and stating that, if the writ petition was filed, the order would constitute an order to show cause why the

relief requested should not be granted. On July 16, Father filed a petition for extraordinary writ under rule 8.452 of the California Rules of Court. On July 26, Agency filed a response to petition for extraordinary writ. On July 30, we issued an order to show cause.

DISCUSSION

I

Juvenile Dependency Law Generally

"The purpose of the California dependency system is to protect children from harm and preserve families when safe for the child. (§ 300.2.) (*In re Dakota H.* (2005) 132 Cal.App.4th 212, 228.) The focus during the reunification period is to preserve the family whenever possible. [Citation.] Until services are terminated, family reunification is the goal and the parent is entitled to every presumption in favor of returning the child to parental custody. (§§ 366.21, 366.22; [citation].)" (*Tracy J. v. Superior Court* (2012) 202 Cal.App.4th 1415, 1424 (*Tracy J.*).)

Family reunification services are subject to strict time limitations. "[T]o prevent children from spending their lives in the uncertainty of foster care, there must be a limitation on the length of time a child has to wait for a parent to become adequate. [Citations.] To avoid unnecessary delays in the process the Legislature has directed the juvenile court to 'give substantial weight to a minor's need for prompt resolution of his or her custody status, the need to provide children with stable environments, and the damage to a minor of prolonged temporary placements.' (§ 352, subd. (a).)" (*In re Marilyn H.* (1993) 5 Cal.4th 295, 308.) "Under the current dependency scheme, except in limited

circumstances, a parent is entitled to 12 months of reunification services, with a possibility of 6 additional months, when a child is removed from a parent's custody. (§ 361.5.) The juvenile court must review the case once every six months. (§ 366.)" (*Ibid.*)

"At each review hearing, if the child is not returned to the custody of his or her parent, the juvenile court is required to determine whether reasonable services . . . designed to aid the parent in overcoming the problems that led to the initial removal and the continued custody of the child have been offered or provided to the parent (§ 366.21, subds. (e), (f).)" (*In re J.P.* (2014) 229 Cal.App.4th 108, 121.) Only in rare circumstances may the juvenile court continue the 18-month review hearing or order additional reunification services (e.g., if the parents have been completely denied adequate reunification services). (See, e.g., *Tracy J.*, *supra*, 202 Cal.App.4th at pp. 1426-1428; *Mark N. v. Superior Court* (1998) 60 Cal.App.4th 996, 1000, 1017.) "[T]he 18-month review hearing constitutes a critical juncture at which 'the court must return children to their parents and thereby achieve the goal of family preservation or terminate services and proceed to devising a permanent plan for the children.' " (*Katie V. v. Superior Court* (2005) 130 Cal.App.4th 586, 596.) This strict statutory timeframe reflects a legislative determination that, notwithstanding the law's preference for maintaining familial relationships, "a child's needs for a permanent and stable home cannot be postponed for an extended period without significant detriment." (*In re Joshua M.* (1998) 66 Cal.App.4th 458, 474.)

If reasonable services have been provided to the parent, "section 366.22, subdivision (a) requires the juvenile court at the 18-month review hearing to return the child to the custody of the parent unless it determines, by a preponderance of the evidence, that return of the child would create a substantial risk of detriment to the child's physical or emotional well-being." (*In re Yvonne W.* (2008) 165 Cal.App.4th 1394, 1400 (*Yvonne W.*)). It is Agency's burden to establish detriment. (§ 366.22, subd. (a); *Yvonne W.*, at p. 1400.) "The standard for showing detriment is 'a fairly high one. It cannot mean merely that the parent in question is less than ideal, did not benefit from the reunification services as much as we might have hoped, or seems less capable than an available foster parent or other family member.' " (*Yvonne W.*, at p. 1400, quoting *David B. v. Superior Court* (2004) 123 Cal.App.4th 768, 789.) "Rather, the risk of detriment must be *substantial*, such that returning a child to parental custody represents some danger to the child's physical or emotional well-being." (*Yvonne W.*, at p. 1400.)

"In evaluating detriment, the juvenile court must consider the extent to which the parent participated in reunification services. (§ 366.22, subd. (a); *Blanca P. v. Superior Court* (1996) 45 Cal.App.4th 1738, 1748 [*Blanca P.*]). The court must also consider the efforts or progress the parent has made toward eliminating the conditions that led to the child's out-of-home placement. (§ 366.22, subd. (a); *In re Dustin R.* (1997) 54 Cal.App.4th 1131, 1141-1142 [*Dustin R.*])." (*Yvonne W.*, *supra*, 165 Cal.App.4th at p. 1400.)

We review a juvenile court's finding of a substantial risk of detriment under section 366.22, subdivision (a), for substantial evidence to support it. (*Sue E. v. Superior*

Court (1997) 54 Cal.App.4th 399, 404.) "When an appellate court reviews a sufficiency of the evidence challenge, we may look only at whether there is any evidence, contradicted or uncontradicted, which would support the trier of fact's conclusion. We must resolve all conflicts in favor of the court's determination, and indulge all legitimate inferences to uphold the court's order. Additionally, we may not substitute our deductions for those of the trier of fact. [Citations.]" (*In re John V.* (1992) 5 Cal.App.4th 1201, 1212 (*John V.*)). The appellant or petitioner who challenges the juvenile court's detriment finding has the burden to show that substantial evidence does not support the court's finding. (*In re L.Y.L.* (2002) 101 Cal.App.4th 942, 947.)

II

Substantial Evidence Supports Court's Detriment Finding

Father contends there is insufficient evidence to support the juvenile court's finding at the contested 18-month review hearing that the return of the children to his custody would create a substantial risk of detriment to their physical or emotional well-being. We disagree.

Father asserts that by the time of the 18-month review hearing he had completed enough of his case plan's requirements to ameliorate any risk of detriment to his children if they were returned to him. However, our review of the record shows there is substantial evidence to support the court's finding that despite Father's commendable efforts, he had yet to establish that he had maintained his sobriety consistently over a sufficient period of time to provide his children with a safe and stable environment.

A juvenile court may find a substantial risk of detriment under section 366.22, subdivision (a), even though a parent has complied with most, or even all, of the technical requirements of the parent's case plan for reunification. (*Dustin R.*, *supra*, 54 Cal.App.4th at p. 1143; *Blanca*, *supra*, 45 Cal.App.4th at p. 1748.) In cases involving a parent's substance abuse, the juvenile court must consider the likelihood of whether the parent will maintain a "stable, sober and noncriminal lifestyle for the remainder of [the child's] childhood." (*In re Brian R.* (1991) 2 Cal.App.4th 904, 918.) Here, although the court noted Father's commendable progress, it stated that this case was "not as clear-cut as one would think." The court agreed with Agency that Father had not yet shown that he could maintain his sobriety consistently over time such that he could provide the children with "solid, dependable, [and] safe parenting." The record shows Father had been using methamphetamine for about one and one-half years at the time the children's dependency petitions were filed. At that time, Father did not immediately accept full responsibility for his drug use, instead blaming it on, at least in part, his move to California and the maternal grandmother. Furthermore, after his release from jail in April 2018, Father did not immediately enroll in a drug treatment program and, when he did, attended it only for a month before being discharged in June 2018 for excessive absences. Although Father explained that he discontinued his attendance at the drug treatment program because he thought he would be "leaving and probation said it was okay," the court reasonably could infer that explanation was incredible or inadequate because Father did not move to Pennsylvania until late August. Therefore, the court reasonably could find that Father's discharge from the drug treatment program and failure to secure treatment through

another program showed a lack of a consistent, positive effort to address his drug problem.

The record also shows that although Father moved to Pennsylvania in late August 2018, he did not immediately enroll in a drug treatment program there, explaining that he preferred to wait for a program referred to him by his probation officer so that he would not have to pay for it. Father had an intake appointment in mid-October for a program referred to him by his probation officer, however, he did not begin attending that program until late January 2019, over three months later. The court reasonably could infer that Father's significant delay in attending a drug treatment program in Pennsylvania showed a lack of commitment to immediately address his drug abuse problem and provide a safe and stable environment for his children.

Also, based on the circumstances of Father's December 2018 car accident, the court reasonably could be concerned that Father may have been using drugs at the time of the accident and tried to conceal his usage after the accident. At the May 2019 hearing, Father testified that he had an additional three months before he would complete his drug treatment program. Therefore, although Father had recently made commendable progress toward addressing his drug problems by participating in a drug treatment program, attaining negative drug tests, and regularly attending NA meetings, the court reasonably could infer that he had not yet overcome his drug abuse problem and ameliorated the reason for the children's initial removal.

As stated above, in evaluating detriment under section 366.22, subdivision (a), a court must consider the efforts or progress the parent has made toward eliminating the

conditions that led to the child's out-of-home placement. (*Yvonne W.*, *supra*, 165 Cal.App.4th at p. 1400.) Here, the court found that Father had made "some" progress in complying with his case plan, but that there was "still substantial work that [he] could do or could have done." Based on the entire record and, in particular, Father's long history of drug abuse and belated efforts to address his drug problem, the court reasonably could conclude that Father needed to maintain a longer period of sobriety to show he could safely care for the children and provide them with the stability they need. Accordingly, we conclude there is substantial evidence to support the court's finding that at the time of the May 2019 hearing the return of the children to his custody would create a substantial risk of detriment to their physical or emotional well-being. (§ 366.22, subd. (a)(1).)

Father also asserts the court erred by commenting on, or considering the friendly nature of, Father's relationship to the children.⁵ However, those comments do not show that the court improperly relied on the nature of that relationship in making its decision or, for that matter, that there is insufficient evidence to support the court's detriment finding. We will affirm a court's decision that is correct in law, regardless of its reasoning. (*D'Amico v. Board of Medical Examiners* (1974) 11 Cal.3d 1, 19.) Therefore, because, as we concluded above, there is substantial evidence to support the court's detriment finding, we must affirm its decision regardless of its expressed reasoning. In

⁵ In particular, Father cites the court's statements that "I heard [Father] describe his son as his best buddy. Did I read correctly throughout the reports that he likewise described his daughter as in effect best friends and a peer? That's a concern as . . . the kids don't need another peer. They don't need another friend. What they need is a parent. They need a responsible adult [who] can set limits, draw boundaries, be self-sufficient."

any event, our review of the record shows the court made its decision based on the evidence and not, as Father apparently asserts, on an emotional response to, or any purported expert opinion on, the facts in this case. Accordingly, *Blanca P.*, *supra*, 45 Cal.App.4th 1738, cited by Father, is inapposite to this case and does not persuade us to reach a contrary conclusion.⁶ To the extent the court's consideration of Father's relationship with the children was improper, its consideration of that relationship played only a "very small role" in the court's detriment analysis and does not show there is insufficient evidence to support its detriment finding. (Cf. *Angela S. v. Superior Court* (1995) 36 Cal.App.4th 758, 764 [court's consideration of child's bond with foster parents played very small role in court's detriment finding and did not show insufficient evidence to support finding].) Furthermore, to the extent Father cites evidence or inferences therefrom that could have supported a contrary detriment finding by the court, he misconstrues and/or misapplies the applicable substantial evidence standard of review. (*John V.*, *supra*, 5 Cal.App.4th at p. 1212.)

Citing *Yvonne W.*, Father asserts that the court should have ordered a less drastic alternative of conditional placement of the children with him with family maintenance

⁶ *Blanca P.* involved an expert opinion of a psychologist and quoted language from *In re Jasmon O.* (1994) 8 Cal.4th 398, 430, in which the California Supreme Court stated that in many juvenile dependency cases, without the testimony of psychologists, juvenile courts " 'would have little or no evidence, and would be reduced to arbitrary decisions based upon the emotional response of the court.' " (*Blanca P.*, *supra*, 45 Cal.App.4th at p. 1749.) Because this case did not involve an expert opinion of a psychologist, *Blanca P.* is inapposite.

services. He argues that if the children were placed with him, he could live in the paternal grandmother's home and she could have continued to assist with their care and provide them with safety and stability. However, the premise of Father's argument is ill-founded. Here, as discussed above, the court found that there was a substantial risk of detriment to the children if they were returned to him and we concluded there is substantial evidence to support that finding. Therefore, under section 366.22, subdivision (a)(1), the court was precluded from ordering the return of the children to Father and instead was required by section 366.22, subdivision (a)(3) to set a section 366.26 hearing.⁷ In contrast, in *Yvonne W.*, we concluded that there was insufficient evidence to support the juvenile court's detriment finding and stated that appropriate family maintenance services would be a less drastic means to address Agency's concerns about the child's safety on her return to her parent's care. (*Yvonne W.*, *supra*, 165 Cal.App.4th at pp. 1402-1403.) Therefore, *Yvonne W.* is factually and procedurally inapposite to this case and does not persuade us that the court in this case erred by not returning the children to Father's care with the requirement that he live in the paternal grandmother's home.

⁷ Section 366.22, subdivision (a)(1) provides that at the 18-month permanency review hearing, "the court shall order the return of the child to the physical custody of his or her parent . . . unless the court finds, by a preponderance of the evidence, that the return of the child to his or her parent . . . would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child."

DISPOSITION

The petition is denied.

IRION, J.

WE CONCUR:

HUFFMAN, Acting P. J.

DATO, J.